

1958

June 13

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CONCORD, N.H.

His Excellency Lino Luinell  
Governor of New Hampshire  
Executive Department  
Concord, New Hampshire

Dear Governor Luinell:

This will acknowledge receipt of your letter of June 11, 1958, addressed to Attorney General Wyman, with regard to use of the emergency fund as provided for in RSA 4:18. Your letter has been referred to me for reply during Mr. Wyman's absence from the office.

You refer to the several severe north-eastern storms which occurred in the early part of this year and which did extensive damage in the seacoast region of the State. As a result consultations have been had between representatives of the State of New Hampshire and the U.S. Army Corps of Engineers with regard to determining the best methods to be adopted to prevent and guard against similar damage from such storms in the future. It is my understanding that the problems involved have been intensified as a result of the damage done by the storms of the past months. It has been determined that the first step to meet this situation should be a beach erosion study of the New Hampshire seacoast. The Federal Government will participate with the State of New Hampshire in such a study on a fifty per cent matching basis with State and local funds. However, the only source of any consequence from which such funds might be made available is the emergency fund and you question whether it would be proper and in accordance with the provisions of RSA 4:18 for the Governor and Council to authorize the expenditure of money from the emergency fund for this purpose. The estimated total cost of such a study covering the entire coast line of New Hampshire is \$25,000.00 of which the Federal Government would contribute fifty per cent.

We answer in the affirmative. RSA 4:18 contemplates use of the emergency fund "to aid any state department in any emergency which may arise in carrying on the essential functions of state government and in protecting the interests of the state which have been impaired by said emergency." It will thus be seen that there must

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His Excellency Governor Lane Ewinell

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first be an emergency and that such emergency must arise either in connection with carrying on the essential functions of State Government or must consist of one which impairs the interests of the State. An emergency is defined as "an unforeseen combination of circumstances which calls for immediate action". We believe that the situation resulting from the damage done by the storms referred to above would clearly constitute an emergency within the commonly understood meaning of that term. There is no special guide to determine what the interests of the State are under different circumstances and it is our opinion that under the terms of this statute it is a matter for the determination of the Governor and Council. In most instances the need for protection will probably be self-evident and no special guide will be necessary. We believe that the Governor and Council can properly find on all the circumstances in this instance that the interests of the State have been impaired by an emergency requiring the expenditure of moneys from the emergency fund.

It would seem to be implied by the general terms of RSA 4:18 that a request for the use of such funds should originate with the department or agency most directly concerned. May I therefore take the liberty of suggesting that such department or agency make a formal request to the Governor and Council in this instance if this has not in fact been done.

I am returning to you herewith the letter from the Corps of Engineers to you dated June 3, 1958, and the copies thereof together with the maps and other material which you forwarded for our use.

Sincerely yours,

John J. Zimmerman  
Assistant Attorney General

JJZ/lt  
Encs.